IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 28688 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HDFC BANK LTD
Versus
STATE OF GUJARAT THRO' ADDL. CHIEF SECRETARY AND OTHERS

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Appearance :
MR RAMKRISHNA B DAVE for the Petitioner
MS VJ BRAHMBHATT, ASST. GOVT. PLEADER for Respondent Nos.1 to 4
MS BHARGAVI G THAKAR for Respondent No.5

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 04/12/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

RULE. Ms.Brahmbhatt, learned Assistant Government Pleader, waives service of Rule on behalf of respondent Nos.1 to 4 and Ms.Bhargavi G.Thakar waives service of Rule on behalf of respondent No.5.

2. In the facts and circumstances of the case, the petition is taken up for final disposal today.

3. What is challenged in this petition under Article 226 of the Constitution is the communication dated 5th September 2007 from the Mamlatdar / Circle Officer and Recovery Officer for the Motor Vehicle Tax, RTO, Bhavnagar to the petitioner bank for recovery of arrears of motor vehicle tax.

4. The petitioner is a bank and in the course of its banking business, the petitioner gives loans to customers for purchasing motor vehicles on hypothecation basis. It appears that on account of the defaults committed by respondent No.5, who was granted such facility and who had purchased a vehicle, the petitioner bank repossessed the motor vehicle. According to the petitioner bank, the vehicle was kept in non-use and the RTO authorities were informed accordingly. RTO, Bhavnagar (respondent No.3) issued notice dated 23th November 2006 (Annexure-"C") calling upon the petitioner bank to pay motor vehicle tax for different periods between April 2004 and November 2006 quantified at Rs.2,97, 472/- or to submit explanation why it should not be required to pay such tax. The petitioner bank submitted reply dated 6th January

2007 (Annexure-”D”) contending that during the period when the vehicle remains with the financier, it is not liable to pay any motor vehicle tax. However, the Mamlatdar in the office of the RTO, Bhavnagar (respondent No.4) has sent the impugned communication to the petitioner bank on 5th September 2007 (Annexure-”E”), under which the petitioner is called upon to pay the arrears of motor vehicle tax for the different periods between April 2004 and November 2006.

5. In view of the order that we propose to pass, it is not necessary to set out all the contentions sought to be raised by Mr.Dave, learned counsel for the petitioner. It is undisputed that after respondent No.3 issued notice to the petitioner for paying the motor vehicle tax for the above periods, respondent No.4 issued the impugned communication to the petitioner bank on 5th September 2007 without respondent No.3 giving the petitioner any opportunity of hearing or considering the petitioner's reply dated 6th January 2007 to the notice dated 23rd January 2006 of respondent No.3.

6. In the facts and circumstances of the case, we are of the view that respondent No.4 ought to have given the petitioner an opportunity of personal hearing so that the petitioner would be in a position to make necessary legal and factual submissions. In fact, the impugned communication dated 5th September 2007 at Annexure-”E” does not deal with any of the submissions made by the petitioner. In fact, respondent No.4 is a Recovery Officer and

respondent No.3 was required to deal with all the submissions made by the petitioner in its representation dated 6th January 2007 at Annexure-”D” to the petition.

7. In the result, the impugned communication dated 5th September 2007 at Annexure-”E” to the petition is quashed and set aside with a clarification that it will be open to respondent No.3 to take up the matter from the stage where notice was already issued on 23rd November 2006 (Annexure-”C”). Respondent No.3 himself shall give an opportunity of personal hearing to the petitioner's representative and it will also be open to the petitioner to submit additional reply, if any. Respondent No.3 will then take an appropriate decision in accordance with law.

8. It is clarified that we have not gone into the controversy sought to be raised on behalf of the petitioner and that the petition is allowed only on the ground that the reply given by the petitioner of the notice issued by respondent No.3 was not considered and that the petitioner was not given any opportunity of personal hearing.

9. Rule is made absolute accordingly in the above terms with no order as to costs.

(M.S.SHAH, J.)

(RAVI R.TRIPATHI, J.)

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